

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION AT KNOXVILLE**

IN RE

ERIC SHAWN GRIFFIS,

Debtor.

SIMEON CHOW,
Plaintiff,

VS.

ERIC SHAWN GRIFFIS,
Defendant.

Case No.: 15-bk-33529-SHB
Chapter 13

Adv. Proc: 16-ap-3007-SHB

BRIEF IN SUPPORT OF MOTION TO DISMISS

Comes now the Defendant, by counsel, and for his Brief would show unto the court as follows:

I. FACTS

1. The facts and statements contained in the Motion to Dismiss are incorporated herein by reference.
2. All other facts regarding this case are of record in the bankruptcy proceeding, 15-33529, and/or filed in the adversary case of record are hereby incorporated by reference including the Complaint and other pleadings filed.
3. The Complaint states in the RE: section it is an “Objection to Debtor’s discharge”.¹

1 The Adversary “Cover Sheet” includes a description of the cause of action inconsistent with the actual Complaint.

II. ARGUMENT

Complaint should be Dismissed for Failing to State a Claim Upon which Relief can be Granted

Federal Rule of Bankruptcy Procedure 7012(b) incorporating Fed. R. Civ. P. 12(b)(6) provides that a Defendant may move for dismissal based on the Plaintiff's failure to state a claim upon which relief can be granted. Alternatively, a Motion to Dismiss should be granted for any alternate theory upon which the Plaintiff fails to state a claim.

Bankruptcy Rule 7012 incorporates Rule 12 of the F.R.C.P. and requires that Defendant file a Motion to assert this defense.

In this case only two paragraphs of factual allegations supporting the "objection to Debtor's Discharge" theory are contained within unnumbered paragraphs one (1) and two (2) of the Complaint. Allegations can be summarized as either "fraud" or overcharging for a construction job but none of the facts fall within the scope of a § 727 "discharge" objection cause of action. For example, the second paragraph simply states the creditor's money was "routed to support lavish vacations and other non-contract related expenses". These alleged acts are not transfers of the Debtor's property as required to sustain a Complaint under § 727(a)(2)(A).

Therefore, the Complaint has no factual allegations which would support denial of the discharge under any subsection of 11 U.S.C. § 727(a) and does not state a cause of action upon which relief can be granted and the Complaint is subject to dismissal pursuant to Bankruptcy Rule 7012(b). The Court should dismiss this case based upon the failure to assert a valid claim.

III. CONCLUSION

The Court should dismiss the Complaint in its entirety because there are no factual allegations that exist between the parties that would support a *prima facie* case for denial of discharge under the sections cited by the Plaintiff. The only minimal factual allegations to support said causes of action are unrelated to any discharge theory. The Complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to Bankruptcy Rule 7012(b) for the reasons stated.

Dated this 1st day of April, 2016.

/s/ John P. Newton, BPR #010817
/s/ Richard M. Mayer, BPR #5534
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Brief in Support of Motion to Dismiss** has been served either electronically (ECF) or by placing in the United States First Class Mail (USM) with sufficient postage to insure delivery:

Tiffany Dilorio
Office of US Trustee

(Via ECF)

Simeon Chow
2250 Fallen Oaks Dr.
Knoxville, TN 37932

Dated: April 1, 2016

/s/ John P. Newton, BPR # 010817
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